Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1977

No. 76-695

BOARD OF CURATORS OF THE UNIVERSITY OF MISSOURI: MEMBERS OF THE BOARD OF CURATORS OF THE UNIVERSITY OF MISSOURI, Individually and in Their Official Capacities, et al.,
Petitioners,

vs.

CHARLOTTE HOROWITZ,
Respondent.

BRIEF OF PETITIONERS

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BRIEF OF PETITIONERS

OPINIONS BELOW

The opinion of the United States Court of Appeals for the Eighth Circuit is reported in 538 F.2d 1317 (1976), and is set out in the appendix, P. 48. The order of the United States Court of Appeals for the Eighth Circuit denying Petitioners' petition for rehearing or hearing by court en banc, including the dissent thereto, entered on the 2nd day of September, 1976, is set out in the appendix, P. 56. The opinion of the United States District Court for the Western District of Missouri is not reported, the opinion is set out in the appendix, P. 26.

JURISDICTION

Respondent initiated the case at bar alleging jurisdiction under 42 U.S.C. 1983, 28 U.S.C. 2201, and 28 U.S.C. 1343 (3), 1343(4) and 1331(a). The judgment of the United States Court of Appeals for the Eighth Circuit was entered on July 16, 1976. The petition for rehearing or hearing en banc was denied on September 2, 1976. The Supreme Court granted a stay of mandate on November 1, 1976. Petitioners filed with the Supreme Court a Petition for a Writ of Certiorari on November 17, 1976 and the Supreme Court granted the requested Writ of Certiorari on April 18, 1977. The jurisdiction of this court rests on 28 U.S.C. Section 1254(1).

CONSTITUTIONAL PROVISIONS, STATUTES AND REGULATIONS INVOLVED

This case involves the due process clause of the Fourteenth Amendment to the United States Constitution, said due process clause stating ". . . nor shall any state deprive any person of life, liberty, or property, without due process of law; . . .". U.S.C.A. Constitutional Amend. 14, Section 1

QUESTIONS PRESENTED FOR REVIEW

1. Is a medical student in a public institution of higher education entitled, pursuant to the Constitution of the United States and the Fourteenth Amendment thereto, to a notice of charges and a hearing prior to dismissal from medical school for deficiency in academic performance?

2. Does the dismissal without a formal hearing of a medical student from a public institution of higher education for deficiency in academic performance impose such a stigma or disability upon the student as to amount to a deprivation of liberty under the Fourteenth Amendment, when the student has prior notice and knowledge of the deficiency and the subsequent dismissal and reasons therefor were not made public?

3. If Respondent be found to be entitled to procedural due process prior to dismissal for deficient academic performance, did Respondent receive such procedural due process as is required in an academic determination of qualifications by a medical school?

STATEMENT OF CASE[1]

The case at bar was filed in the Federal District Court for the Western District of Missouri as an action for declaratory judgment and injunctive relief and damages by Respondent, Charlotte Horowitz (hereinafter referred to as Respondent) against The Curators of the University of Missouri, a public corporation, Richardson K. Noback, Dean of the School of Medicine of the University of Missouri-Kansas City and E. Grey Dimond, M.D., Provost for Health Sciences of the University of Missouri-Kansas City (hereinafter referred to as Petitioners). Respondent claimed that she had been denied certain rights guaranteed her by the Constitution and laws of the United States by the failure of Petitioners to graduate Respondent from the School of Medicine of the University of Missouri-Kansas City. Respondent claimed deprivation of due process

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[1] Memorandum and Opinion refers to Federal District Court Order and Memorandum set forth in the Appendix.

Stipulation refers to Stipulations of the parties filed in Federal District Court.

Defendants' exhibits refers to petitioners' exhibits introduced in Federal District Court.

T. refers to official transcript of Federal District Court trial Proceedings filed in Court of Appeals.

of law in that the Medical School of the University of Missouri-Kansas City, in evaluating her academic performance, failed to provide her with a notice of charges and a hearing on the issue of the evaluation of her academic performance. She further claimed denial of equal protection in that her academic evaluation was carried out in a manner that caused her to be disadvantaged by her sex, religion and physical appearance and finally that the decision to not graduate her from Medical School was arbitrary, capricious and unreasonable in that there was not sufficient evidence upon which Petitioners could reasonably find that Respondent was not qualified to graduate with the M.D. degree. Respondent further claimed that Petitioners did not follow their own rules in granting to Respondent the appeal procedure which Respondent elected to utilize (A. 4, Stip. I, II).

Upon the establishment of the School of Medicine at the University of Missouri-Kansas City there was adopted a document entitled "Academic Plan for the School of Medicine of the University of Missouri-Kansas City" which document contains reasonable rules, regulations, policies and procedures utilized by the University of Missouri-Kansas City School of Medicine in the education of students at said Medical School. This document establishes the Council on Evaluation composed of faculty and students, which Council is charged with the responsibility of the overall academic evaluation of student performance in the School of Medicine. The Academic Plan establishes a Coordinating Committee with review power over decisions and or recommendations of the Council on Evaluation on matters of academic evaluation of student performance. The rules, regulations, policies and procedures do not grant to a student the right to a notice of charges and hearing before the Council or Committee wherein an evaluation is being made of the student's overall academic performance and status in the School of Medicine (A. 6, 17, Stip. III 6, 52; Def. Ex. 1; A. 75, T. 58, 175, 375).

The School of Medicine established as a primary goal that of educating and graduating medical students who are safe physicians with the capability of rendering primary care to the general public (A. 46, Memo and Order, Judge Jurgens, page 24; A. 24 Stip. III, 83; A. 141, 143, T. 60, 370-373). The School of Medicine established the requirement that to be graduated from the School of Medicine of the University of Missouri-Kansas City a student must be qualified as a competent and safe physician, qualified to function as a safe physician in rendering primary medical care to the general public (A. 23, Stip. III 81; Def. Ex. 1, 2; A. 91, 92, 108-110, 141-143, 161-165, T. 90, 148-152, 370-375, 456, 462).

Respondent was admitted as a student with advanced standing at the University of Missouri-Kansas City School of Medicine for the academic year beginning in August, 1971 (A-10, Stip. III 22).

The Respondent knew at her time of enrollment in the School of Medicine that to qualify for graduation as a safe physician it would be necessary for her to be competent not only in the basic sciences applying to medicine but also to obtain the necessary degree of proficiency in clinical skills and competency to be qualified for graduation as a safe physician with the M.D. degree irrespective of Respondent's future intentions or career goals. Respondent knew that Petitioners expected and would require of Respondent the same qualifications for graduation, including clinical competency, as any other student irrespective of whether or not Respondent intended to practice medicine by rendering primary care to patients or to enter a career of academic research (A. 11, Stip. III 26; A. 123, 128, 129, 135, 142, 143, T. 222, 246, 262-263, 328, 373, 375) (A. 41, Memo and Order, Judge Jurgens, page 18). In Respondent's own words "I felt that I would need to develop the same clinical skills as any student in the core curriculum in a typical medical school—or average medical school." (A. 135, T. 328).

Respondent was notified in March, 1972, by her Docent (supervising physician, ombudsman and teacher, A. 97, T. 101) some seven months after being admitted to the School, that Respondent's performance in her pediatrics rotation was deficient in that her rapport with patients and her expertise in coming to the fundamentals of the clinical problem were below those of her peer group, that she was erratic in her attendance in the pediatric clinic and that several physicians were disturbed because of Respondent's lack of personal hygiene (A. 12, Stip. III 34; A. 100, 101, 160, T. 229, 107-108, 454). Though Respondent understood the contents of the communication, Respondent did not consider the letter as being constructive criticism and in fact said that there was absolutely no merit to the letter (T. 265-267). Throughout the pediatrics rotation, because of concern for Respondent's unsatisfactory progress in clinical performance, the pediatrics faculty offered her remedial help and attempted to assist her on a one-on-one basis to develop clinical competency and correct deficiencies (A. 157-160, T. 450-453).

On July 5, 1972, Respondent was advised by the Dean of the Medical School by letter that she was placed on probation and informed that she was deficient in keeping to established schedules, meeting all clinical responsibilities on time and gracefully, attending carefully to personal appearance including handwashing and grooming, participating appropriately in activities of the School and directing criticisms and suggestions maturely to her Docent and to the faculty member in charge of the curriculum block as she might have criticisms and suggestions. The written notification of July 5, 1972 followed a complete review by the Council on Evaluation of the academic performance of Respondent and followed a discussion wherein the Respondent was orally informed of the performance deficiencies by the Dean, the Chairman of the Council on Evaluation and the Docent of the Respondent (A. 15, 16, Stip. III 45; A. 117, 124, 146, T. 208, 209, 235, 386, 387; A. 180, Def.

Ex. No. 8). In discussing the deficiencies and areas of concern with the Respondent, each point mentioned in the letter was explained and discussed twice, not just once, so that Appellant would understand where improvement was needed (A. 146, 147, T. 268-271, 386-387).

In October, 1972 the Dean and her Docent had a meeting with the Respondent to review her probationary status with her because her Docent was concerned about her performance. She was advised of concern over her performance and deficiency therein and ways were sought to offer her additional assistance and support. (A. 117, 146-148, T. 208, 209, 387-389).

The Council on Evaluation of the School of Medicine met on December 26, 1972 to review the Respondent's academic performance in the School of Medicine and the Council voted unanimously to approve a recommendation which provided "the Council on Evaluation recommends that this student be continued on probation and not be considered as a candidate for the M.D. degree in June, 1973. The student may choose to remain at UMKC School of Medicine until June 1, 1973 but may not continue beyond that date unless there is radical improvement in the following areas: clinical competence, peer and patient relations, personal hygiene, and ability to accept criticism." (A. 17, 18, Stip. III 54, 55, 56) The student's Docent recommended graduation, though he didn't deem her qualified, because he thought she would go into psychiatry and wouldn't need clinical competency. The Council considered it irrelevant what Respondent would do following graduation because the responsibility was graduation of only competent, qualified, safe physicians. (A. 164-166, T. 461-462) This recommendation was approved by the Coordinating Committee of the School of Medicine and in January, 1973 Respoadent met with her Docent, Dr. William Sirridge, the Chairman of the Council on Evaluation, Dr. Ned Smull and the Dean of the School of Medicine, Dr. Richardson

K. Noback, at which meeting Respondent was informed of the recommendation of the Council on Evaluation, her deficiencies were discussed with her and the Respondent was informed that she must show a marked and very substantial improvement in the areas of deficiencies. Respondent understood what the deficiencies were, but her reaction as in previous and subsequent discussions was to find fault with all those who made critical judgments about her performance (A. 148, 149, T. 391). At this same meeting Respondent was also informed that if she desired to appeal the decision of non-graduation that she could request a special set of oral and practical examinations by a group of physicians who had not been actively engaged in her education. All of these matters including a listing of the areas of deficiencies and her option to appeal the decision of non-graduation were advanced to Respondent in a written communication from the Dean of the School of Medicine under date of February 7, 1973 (A. 18, Stip. III 57, 58; A. 182 Def. Ex. No. 9). (A. 117, 124, 125, 130, 147-151; T. 208-209, 237-238, 299, 389-394).

The letter giving Respondent the notification provided, in part:

> ". . . and you must make very marked and very substantial improvement in several areas. These are: clinical competence, peer and patient relations, personal hygiene, and ability to accept criticism.
>
> This means that these very substantial and marked improvements must take place and be satisfactory to the Council on Evaluation or you will not be able to continue in the Medical School after May of this year."

Respondent did by letter of February 9, 1973 elect to appeal the decision of non-graduation and requested the Dean of the School of Medicine to implement the appeals procedure by

having Respondent undergo oral and practical examinations by physicians who had not been actively engaged in her medical education (A. 19, Stip. III 59, A. 126, T. 239-242). Though the appeals mechanism was not spelled out word for word in the Academic Plan, the right of a student to appeal a decision had always been considered a part of the plan of the school (A. 85, 86, T. 80, 176) and the appeals mechanism as established was fair and impartial toward Respondent (A. 149-151, T. 392-394).

On March 15, 1973 by written communication the Dean of the School of Medicine established a method of Respondent's undergoing oral and practical examinations by seven experienced physicians none of whom had had appreciable contact with Respondent during her attendance at Medical School, all of whom were instructed to provide a careful detail and thorough assessment of Respondent's abilities to the Dean of the School of Medicine with a written evaluation of those abilities and a recommendation for future action (A. 208, Def. Ex. No. 22; A. 19, Stip. III 60, 61). The Dean met with the seven examining physicians prior to their examining Respondent (A. 19, Stip. III 62, 63) and advised the examiners that the school was interested in an objective, searching and fair evaluation of Respondent's competency (A. 73, 74, T. 50, 51).

Respondent did undergo oral and practical examination separately by each of the panel of seven experienced physicians, with each of the physicians providing the School of Medicine with their own report, evaluation and recommendation following the examination of Respondent (A. 19, Stip. III 64).

Only one of the seven examining physicians deemed Respondent qualified and competent to be graduated in June, 1973 with the M.D. degree (A. 196, Def. Ex. No. 18). The doctor recommending graduation however stated that he had not had an opportunity to observe Respondent taking a patient

history, doing a physical examination and carrying out the diagnosis on a patient since he had only examined her on the laboratory aspects as a pathologist, thus he had no opportunity to observe her clinical competency (T. 52, 53). One of the physicians recommended graduation in June, 1973 even though he deemed Respondent not qualified to graduate in June, 1973 with the M.D. degree (A. 190, Def. Ex. No. 15) and five physicians, each independent of the other, concluded that Respondent was not qualified to graduate with the M.D. degree in June, 1973 (A. 192, 195, 199, 201, 205, Def. Ex. No. 16, 17, 19, 20, 21; Newman Depos. pp. 6-12; A. 38-40, Memo and Order, Judge Jurgens, pages 15, 16, 17).

The Council on Evaluation of the School of Medicine following receipt of the reports and evaluations made by the seven experienced physicians affirmed its previous decision that Respondent was not qualified to graduate in June, 1973 (A. 20 Stip. III 66, 72; A. 162 T. 458); the Coordinating Committee of the School of Medicine on May 7, 1973 again sustained the action by the Council on Evaluation that Respondent not graduate in June, 1973 and Respondent was so notified by the Dean of the School of Medicine (A. 21, Stip. III 71, 74; A. 187, Def. Ex. No. 12; A. 164, 165, T. 460-461).

The Council on Evaluation of the School of Medicine met on May 14, 1973 and again on May 28, 1973 to review the academic performance of Respondent (exclusive of the evaluations by the seven physicians (A. 164, 165, T. 460-461) for the period of time from December, 1972 through the date of the meetings to determine whether Respondent had made radical improvements (as called for in earlier Council action) in the areas of deficiencies of which she had been previously informed. The Council on Evaluation unanimously recommended that Respondent be dropped from the University of Missouri-Kansas City School of Medicine (A. 166, T. 463; A. 21, Stip. III 73).

The Coordinating Committee of the School of Medicine met on June 4, 1973 to consider the recommendation of the Council on Evaluation that Respondent not be allowed to continue in the School of Medicine and the Coordinating Committee accepted the recommendation of the Council that Respondent be dropped as a student from the School of Medicine (A. 22, Stip. III 77).

Since Respondent had been on probation for in excess of one academic year, had received several notifications of deficiency in performance, repeated discussions and meetings with respect to her performance and repeated attempts to help her improve performance (A. 90, 108, 147, 155, T. 87, 148, 150, 152, 389, 401, 426), by letter of July 6, 1973, Respondent was notified by the Dean of the School of Medicine that he had accepted the recommendations of the Council on Evaluation and the Coordinating Committee and that Respondent was no longer a student of the School of Medicine (A. 22, Stip. III 78).

Respondent appealed the decision of dismissal to the Provost for Health Science. Following a review of all academic records and evaluations, the Provost sustained the action of the Council on Evaluation, the Coordinating Committee and the Dean. (A. 154, 155, T. 400-401).

At numerous times throughout her attendance at the Medical School, Respondent consulted with her Docent, Dr. William T. Sirridge, with respect to her performance in the Medical School, the reason for her being placed on probation and the reasons for which the Medical School deemed her performance to be deficient (A. 100, 101, 108, 109, 110, T. 108, 148, 150, 157). Respondent on numerous occasions appeared before, discussed and was heard in respect to her performance by the Dean of the School of Medicine, the Assistant Dean and Chairman of the Council on Evaluation and her Docent (A. 22, 23, Stip. III 80; A. 130, 132, 133, 146-148, T. 268, 299, 322, 386-389; A. 34 Memo. and Order, Judge Jurgens, pages 10, 11).

Respondent's Docent, Dr. William T. Sirrridge, counseled with, helped and assisted Respondent in an attempt to correct the areas of deficiencies in Respondent's overall performance (A. 90, 108-110, T. 87, 148, 150, 152, 155; A. 34 Memo. and Order, Judge Jurgens, pages 10 and 11). As her Docent, Dr. Sirridge had more contact with Respondent than any other teacher (A. 97, T. 101) and though he had earlier given a letter of recommendation because he thought she would correct the deficiencies (A. 105, T. 126), his opinion was that Respondent was not a safe physician and, therefore, not qualified to graduate (A. 109, 110, T. 151, 152). In his opinion she was not clinically competent (A. 108, T. 148) as she would not do the work, would not seek the opportunity to learn clinical skills, to diagnose patients, and she thought she could become a doctor just by reading a book (A. 108-110, T. 140, 148-152).

Petitioners did not make public nor reveal to any source outside its own Medical School officials the dismissal of Respondent or the reasons therefor as is evidenced by Petitioners refusal to discuss or provide any information as to dismissal or reasons therefore to the organization known as American Women in Science. (T. 66, 353-354).

The trial judge, Senior Judge Jurgens, after a two day trial of the case found against Respondent and in favor of Petitioners on all allegations advanced by Respondent. The Court found that Respondent not only was not denied procedural due process but that Petitioners went beyond the requirements of procedural due process by affording Respondent the opportunity to be examined by seven independent physicians in order to be absolutely certain that their grading of the Respondent in her medical skills were correct, finding that the evidence totally failed to show that any member of the faculty was prejudiced in any way against Respondent because of her sex, race, religion or appearance; finding that Respondent was aware of the requirements of graduation, including clinical competency and the

ability to function as a safe physician; finding that Respondent was aware of deficiencies in clinical performance and was counseled repeatedly in respect thereto and finding that the evidence totally failed to establish that Respondent was dismissed for any reason other than the quality of her work and that the dismissal was not a result of bad faith, arbitrary or capricious action on the part of Petitioners.

By opinion dated July 16, 1976 the United States Court of Appeals for the Eighth Circuit reversed outright the judgment of the trial court and found that the Fourteenth Amendment to the Constitution of the United States required a notice of charges and hearing before a medical student could be dismissed from medical school for academic performance deficiencies (A. 48).

Petitioners' request for a rehearing or hearing en banc was denied by a five to three vote of the United States Court of Appeals for the Eighth Circuit on September 2, 1976 with a written dissent being made a part of that order (A. 56).

The Supreme Court of the United States under date of April 18, 1977 granted a writ of certiorari as requested by Petitioners.

ARGUMENT

I

A Medical Student in a Public Institution of Higher Education Is Not Entitled, Pursuant to the Constitution of the United States and the Fourteenth Amendment, to a Notice of Charges and a Hearing Prior to Dismissal From Medical School for Deficient Academic Performance.

The Supreme Court is being asked to determine whether or not public universities, colleges, professional educators, the judiciary of state courts and federal courts have been mistaken for decades in not giving or requiring a specific notice of charges and a full due process hearing to a student prior to dismissing the student for deficient academic performance. This is a case of first impression with the Supreme Court.

The United States District Court for the Western District of Missouri, following a two day trial, held that a public institution of higher education is not legally required to give a medical student a notice of charges of deficiency and subsequent hearing thereon prior to dismissing the student for deficient academic performance. The court found that the institution had exceeded legal requirements of due process in the opportunities extended to the student. (A.-26)

The United States Court of Appeals for the Eighth Circuit reversed the lower court and in doing so became the first federal court to hold that the Fourteenth Amendment to the Constitution of the United States requires a public institution of higher education to give a medical student a written notice of charges and hearing before the decision-making body or bodies and accorded all other procedural due process prior to dismissing the student for deficiencies in academic performance. Presumably,

by stating all other procedural due process rights, the court means a hearing with all attributes of a trial, including such things as the right to counsel and the right to confront and cross-examine witnesses. (A.-48)

The Court of Appeals held that such a dismissal for deficient academic performance imposed a stigma upon the student and thus deprived the student of liberty within the meaning and intent of the due process clause of the Fourteenth Amendment to the Constitution of the United States. The court found that the dismissal stigmatized the individual in such a way that she will be unable to continue her medical education and her chances of returning to employment in a medically related field are severly damaged. The Court of Appeals placed total reliance for legal authority upon the decisions rendered by the Supreme Court in the cases of *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 92 S. Ct. 2701, 33 L.Ed.2d 548 (1972) and *Perry v. Sindermann*, 408 U.S. 593, 92 S. Ct. 2694, 33 L.Ed.2d 570 (1972) and its own decision in *Greenhill v. Bailey*, 519 F.2d 5 (8th Cir. 1975). The Eighth Circuit Court of Appeals opinion misconstrued the meaning and intent of the *Roth* and *Sindermann* opinions and failed to distinguish the *Greenhill* opinion.

Though the Supreme Court has never considered the precise question presented, the court has reached several decisions in recent years which indicate that a medical student at a public institution of higher education is not entitled to procedural due process prior to dismissal for deficient academic performance. These cases hold that an individual is entitled to procedural due process only when the individual is being deprived of an interest within the meaning and intent of the Fourteenth Amendment to the Constitution of the United States. This Court stated in *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 569-570, 92 S. Ct. 2701, 2705, 33 L.Ed.2d 548, 556-557 (1972):

"The requirements of procedural due process apply only to the deprivation of interests encompassed by the Fourteenth Amendment's protection of liberty and property. When protected interests are implicated, the right to some kind of prior hearing is paramount. But the range of interests protected by procedural due process is not infinite."

In *Board of Regents v. Roth, supra,* the court acknowledged that while the Court had eschewed rigid or formalistic limitations on the protection of procedual due process, it has at the same time observed certain boundaries. Though the Court did not specifically define liberty, it did set forth those rights which are protected as liberty interests other than just freedom from bodily restraint. The Court in considering whether or not an untenured professor had been deprived of liberty by not having his employment contract renewed looked to determine whether or not the state had made a charge against the professor that would seriously damage his standing and association in his community, as for example by charging the professor with dishonesty or immorality, and found that no such charges had been made against the professor. In the case at bar there were absolutely no charges of dishonesty or immorality, the only so-called charge in respect to Respondent being that of deficient cademic performance. It is submitted that the guideline utilized in the *Roth* case, *supra,* of determining whether or not a "person's good name, reputation, honor or integrity is at stake because of what the government is doing to him" is the proper analysis to be utilized in determining if a medical student has a liberty interest protectable by the requirements of the Fourteenth Amendment to the United States Constitution.

It is submitted that dismissal from a medical school for the sole reason of deficient academic performance does not reflect upon a person's good name, reputation, honor or integrity any more than the non-renewal of a professor's contract of employment reflects upon the professor. Admittedly, the dismissal

will make the student somewhat less attractive to other medical schools, but it does not foreclose the student seeking admission to another school and gaining admission. It is further submitted that dismissal from medical school for deficient academic performance does not reflect upon the other liberty rights denoted in *Roth, supra,* those being the right of contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to one's own dictates and generally to enjoy those privileges long recognized as essential to the orderly pursuit of happiness by free men.

The Supreme Court in the recent case of *Bishop v. Wood,* 426 U.S. 341, 96 S. Ct. 2074, 48 L.Ed.2d 684 (1976) followed the *Roth, supra,* decision and held that a policeman who was fired, even if the firing was a mistake and based upon incorrect information, was not deprived of liberty within the meaning of the Fourteenth Amendment and was, therefore, not entitled to a notice of charges and a hearing since his good name, reputation, honor or integrity had not been infringed upon because there was no public disclosure of his discharge. In fact, in the case at bar, Petitioners refused to disclose to any source outside the Medical School officials such information.

As in the *Bishop* case, the Petitioners in the case at bar did not make a public disclosure to any individual, group, organization, or association, of the dismissal of Respondent from Medical School or the reasons therefor. It is submitted that a medical student, particularly where the trial judge had found that the sole reason for dismissal was deficient academic performance, (A.-44) does not have greater "liberty" rights than a public employee. The nature of a student's interest is certainly no greater than the nature of the interests of a public employee. If a public employee is not constitutionally entitled to refute a city manager's judgment at a hearing, then a medical student

should not be deemed entitled to the right to refute a medical school's academic judgment and evaluation at a hearing.

Just as the police officer is free to seek other employment, a medical student dismissed for deficient academic performance is free to seek admission to other educational institutions and is free to seek employment in medically related fields of endeavor.

If an individual does not have a protected liberty interest where public announcements have been made concerning the fact that the person is known to be active in the criminal field as a shoplifter, *Paul v. Davis*, 424 U.S. 693, 96 S. Ct. 1155, 47 L.Ed.2d 405 (1976), then by comparison a dismissal from a medical school for deficient academic performance (not revealed to the public) does not infringe upon one's good name, reputation, honor or integrity. Furthermore, a dismissal for deficient academic performance does not place upon the student a badge of infamy or disgrace, *Wisconsin v. Constantineau*, 400 U.S. 433, 91 S. Ct. 507, 27 L.Ed.2d 515 (1971).

The Eighth Circuit Court of Appeals in *Greenhill v. Bailey*, *supra*, found a deprivation of liberty, not because of dismissal for deficient academic performance, but because the school placed upon its permanent records an assertion that the student lacked the intellectual ability or was intellectually unfit to become a doctor and communicated that assertion to outside sources. In *Greenhill*, *supra*, at page 8 the Court said:

> "We hold that the action by the school in denigrating Greenhill's intellectual ability, *as distinguished from his performance*, deprived him of a significant interest in liberty, for it admittedly 'imposed on him a stigma or other disability that foreclose(s) his freedom to take advantage of other * * * opportunities.'" (Emphasis Added)

The case at bar is concerned solely with academic performance and neither the dismissal of Respondent nor the deficient academic performance was communicated nor revealed to any source outside the University of Missouri—Kansas City School of Medicine.

It is submitted that Respondent has not been deprived of 'liberty' and has not been stigmatized by dismissal from Medical School for deficient academic performance. There was absolutely no public disclosure of Respondent's dismissal and the reasons for the dismissal. The dismissal of a student solely for deficient academic performance does not challenge their good name, reputation, honor or integrity within the meaning of the *Roth*, *supra* and *Bishop*, *supra* decisions. Though the non-retention of a medical student in a medical school might make the student somewhat less attractive to another medical school or employment in a medically related field, this fact would hardly establish the kind of foreclosure of opportunities amounting to a deprivation of liberty. *Board of Regents v. Roth*, *supra*.

A medical student at the University of Missouri-Kansas City does not have a property interest so as to be entitled to procedural due process prior to dismissal for deficient academic performance. The Supreme Court in *Goss v. Lopez*, 419 U.S. 565, 95 S. Ct. 729, 42 L.Ed.2d 725 (1975), *Board of Regents v. Roth*, *supra*, *Bishop v. Wood*, *supra* and *Paul v. Davis*, *supra*, has stated that protected interests in property are not created by the United States Constitution, but are created and their dimensions are defined by an independent source such as state statutes or rules entitling the citizen to certain benefits. The Respondent does not have a right to a medical education in a public institution of higher education in the State of Missouri since the state has not extended that right to any individual by way of statute, regulations or otherwise. Further, the University of Missouri has not by regulation, rule or practice granted to Respondent or any other individual the right to a medical education. Most assuredly, the law of Missouri and the rules of the University require students to receive equal treatment, but pro-

vide no right to remain in school irrespective of academic performance and hold out no right to graduate and practice medicine. The case at bar is clearly distinguishable from *Goss v. Lopez, supra* not only because that case did not involve higher education; did not involve academic evaluation, but rather discipline for misconduct and more importantly because that case involved a state which extended the right to a secondary education by means of a compulsory attendance law and a free education.

Education is not a right protected by the United States Constitution, *San Antonio Ind. School District v. Rodriguez*, 411 U.S. 1, 93 S. Ct. 1278, 36 L.Ed.2d 16 (1973) although the importance of education to our democratic society is obvious to all. *Flemming v. Adams*, 377 F.2d 975 (10th Cir. 1967) cert. denied 389 U.S. 898, 88 S.Ct. 219, 19 L.Ed.2d 216 (1967). Since the Constitution of the United States, the laws of the State of Missouri and the rules and regulations of the University of Missouri do not give Respondent the legal right to a medical education, the right to receive the Medical Doctor degree or the right to practice medicine, the Respondent does not have a property interest subject to the protection of the Fourteenth Amendment. As stated in *Board of Regents v. Roth, supra*, 408 U.S. at 577, 92 S.Ct. at 2709, 33 L.Ed.2d at 561:

> "To have a property interest in a benefit, a person must clearly have more than an abstract need or desire for it. He must have more than a unilateral expectation of it. He must have a legitimate claim of entitlement to it."

It is respectfully submitted that Respondent as a medical student at a public institution of higher education has not been deprived of liberty or property within the meaning and intent of the due process clause of the Fourteenth Amendment to the Constitution of the United States. To hold otherwise will mean a total change in the law as applied to public higher education.

It would present far reaching implications as to the relationship of students to institutions of higher education and their faculties who have heretofore not been interfered with by the judiciary in making academic performance evluations. The Chief Judge of the Eighth Circuit Court of Appeals in referring to the court's opinion in the case at bar stated:

> "My main concern with this decision is that it impermissively injects the courts into the academic environment of colleges and professional schools to an unacceptable degree. Educational institutions are much more qualified and better positioned to promulgate and enforce procedures which regulate academic performance. Dismissals due to academic deficiencies are not uncommon and schools may be expected to review the files of a number of students during the course of an academic year to determine whether expulsion is warranted. The present case seems to require the schools to give all such students formal notification of their deficiencies and an opportunity to respond before dismissal, regardless of how egregious the deficiency might be. Such a rule is likely to foment future litigation and subject educational institutions to unnecessary monitoring and to possible monetary judgments. This decision is not, in my opinion, in accord with existing principles of constitutional law and fails to give sufficient deference to the perspective and unique position of school administrators." (A.-56, 57)

Throughout the history of this nation the courts have refrained from interfering with the authority vested in school officials to dismiss a student for failure to attain or maintain prescribed academic performance and the courts have intervened only where it has been shown that school authorities acted arbitrarily, capriciously, or without basis in fact. *Connelly v. University of Vermont and State Agriculture College*, 244 F. Supp. 156 (D. Vt. 1965); *Keys v. Sawyer*, 353 F. Supp. 936 (S.D.

Tex. 1973); *Depperman v. University of Kentucky*, 371 F. Supp. 73 (E.D. Ky. 1974); *Gaspar v. Bruton*, 513 F.2d 843 (10th Cir. 1975); *Greenhill v. Bailey*, 378 F. Supp. 632 (S.D. Iowa 1974) (rev'd on sep. grounds, *supra*); *Mahavongsanan v. Hall*, 529 F.2d 448 (5th Cir. 1976); *Militana v. U. of Miami*, Fla. App. 1970, 236 S.2d 162, cert. denied 1971, 401 U.S. 962, 91 S. Ct. 970, 28 L.Ed.2d 245; *Mustell v. Rose*, 211 S.2d 489 (Ala. 1968), cert. denied 1968, 393 U.S. 936, 89 S. Ct. 297, 21 L.Ed.2d 272. As pointed out by this court in the case of *Goss v. Lopez*, 419 U.S. 565, 578, 95 S. Ct. 729, 738, 42 L.Ed.2d 725, 737, quoting from the case of *Epperson v. Arkansas*, 393 U.S. 97, 104, 89 S. Ct. 266, 270, 21 L.Ed.2d 228, 234 (1968): "Judicial interposition in the operation of the public school system of the nation raises problems requiring care and restraint . . . By and large, public education in our Nation is committed to the control of state and local authorities."

In the case at bar the findings of the Federal District Court clearly answered any question of whether or not Respondent's dismissal from Medical School was arbitrary, capricious or without basis in fact by the court stating:

> "The Court finds that defendants acted properly in evaluating plaintiff's academic performance and in denying graduation and in dismissing plaintiff from medical school, since the evidence *overwhelmingly* showed plaintiff was not capable of performing as a medical doctor." (A. 46, p. 24, emphasis added) and
>
> "The evidence presented in the case totally failed to establish that plaintiff was expelled for any reason other than the quality of her work." (A. 44, p. 22)

Thus the case at bar does not fall into any previously recognized legal exception to the above-referred to general rule of court non-intervention.

Procedural due process is required before a student can be dismissed for misconduct. *Goss v. Lopez, supra; Dixon v. Alabama State Board of Education*, 294 F.2d 150 (5th Cir. 1961); denied 368 U.S. 930, 82 S. Ct. 368, 7 L.Ed.2d 193; *Esteban v. Central Missouri State College*, 277 F. Supp. 649 (W.D. Mo. 1967). However, the dismissal in the present case was for deficient academic performance of which Respondent had ample prior notice and was not for student misconduct. *Greenhill v. Bailey, supra; Gaspar v. Bruton, supra.* As stated in *Mahavongsanan v. Hall, supra*, at 450:

> "Misconduct and failure to attain a standard of scholarship cannot be equated. A hearing may be required to determine charges of misconduct, but a hearing may be useless or harmful in finding out the truth concerning scholarship. There is a clear dichotomy between a student's due process rights in disciplinary dismissals and in academic dismissals." (cites omitted)

Where the dismissal of a medical student, or for that matter any student in a public institution of higher education, is for failure to meet standards of academic performance, it is clear that a notice of charges and a hearing are not and should not be required. *Brookins v. Bonnell*, 362 F. Supp. 379 (E.D. Pa. 1973); *Connelly, supra; Keys, supra; Depperman, supra; Mahavongsanan, supra; Greenhill, supra; Militana v. U. of Miami*, Fla. App. 1970, 236 S.2d 162, cert. denied 1971, 401 U.S. 962, 91 S. Ct. 970, 28 L.Ed.2d 245; *Mustell v. Rose*, 211 S.2d 489 (Ala. 1968), cert. denied 1968, 393 U.S. 936, 89 S. Ct. 297, 21 L.Ed.2d 272. The reasoning for such judicial non-intervention was stated in *Connelly, supra*, at p. 160 as follows:

> "The reason for this rule is that in matters of scholarship, the school authorities are uniquely qualified by training and experience to judge the qualifications of a student, and the efficiency of instruction depends in no small degree

upon the school faculty's freedom from interference from other non-educational tribunals."

and in speaking of medical students the *Connelly*, *supra*, court stated at p. 160:

"The rule of judicial nonintervention in scholastic affairs is particularly applicable in the case of a medical school. A medical school must be the judge of the qualifications of its students to be granted a degree; Courts are not supposed to be learned in medicine and are not qualified to pass opinion as to the attainments of a student in medicine."

The Eighth Circuit Court of Appeals in *Greenhill*, *supra*, at 9, in holding that a medical school was not required to have a hearing on a student's academic performance or evaluation, stated:

"A graduate or professional school is, after all, the best judge of its student's academic performance and their ability to master the required curriculum."

It is respectfully submitted that the reasoning in the aforementioned cases is indeed proper and correct. To require public institutions to give a notice of charges and a hearing before a student is dismissed for academic performance will require a total reversal of the long history of judicial non-intervention and must of necessity mean that the courts will in the future be the final judge of the qualifications of students to be granted degrees, because if the Fourteenth Amendment requires such action by the public institutions it must also require a review on the merits by the judicial system. The Federal District Court summed up such a state of affairs in *Keys*, *supra*, at page 939 as follows:

"Such an inquiry would necessarily entail the complete substitution of a court evaluation of a complainant's level of achievement in the subject under review, and the standard by which such achievement should be measured, for

that of the professor. It would be difficult to prove by reason, logic or common sense that the federal judiciary is either competent, or more competent, to make such an assessment."

II

Even If Respondent Be Found to Be Entitled to Procedural Due Process Prior to Dismissal for Deficient Academic Performance, Respondent Received Such Procedural Due Process as Is Required in the Academic Determination of Qualifications by a Medical School.

Procedural due process pursuant to the Fourteenth Amendment to the United States Constitution is not an inflexible set of rules that must be applied to every fact situation that comes along, but the precise dictates of due process in a given factual situation are controlled by a consideration of the governmental function and the private interests affected. *Goss v. Lopez*, *supra*; *Greenhill v. Bailey*, *supra*. A key consideration is that of whether or not the individual was treated with fairness.

It has previously been pointed out that the Respondent as a medical student did not have a legally protectable interest of liberty or property under the Fourteenth Amendment to the United States Constitution. The governmental function which is under consideration in the case at bar is that of educating future medical doctors of this nation and the awesome responsibility to the general public of graduating only those individuals who are safe and competent physicians. When an individual is graduated from a public institution of higher education with the degree of Doctor of Medicine the institution is holding out to the public that this individual is a qualified safe and competent physician and the general public of this nation places reliance upon the representation of the institution. It is, therefore, sub-

mitted that even if one assumes that the nature of a medical student's interest is such as to require some degree of procedural due process, a weighing of the governmental interest and that of the medical student in the case at bar will show that the numerous prior notices of deficient academic performance received by Respondent and the numerous meetings Respondent had with medical school officials and faculty to discuss such deficiencies was fair to the student and complied with requirements of procedural due process.

Even though Petitioners contend that they were not required to provide Respondent with a notice of charges and a hearing, a review of the facts in the case at bar reveals the fair and reasonable manner in which Respondent was treated and reveals the reasons for the District Judge finding that the Medical School went well beyond any requirements of procedural due process.

Respondent was notified in March, 1972, after having initially enrolled in September, 1971, that her academic performance in pediatrics was deficient and was warned that the areas of deficiencies included rapport with patients and her expertise in coming to the fundamentals of a clinical problem, that her attendance was erratic in the pediatric clinic and that physicians were disturbed because of Respondent's lack of personal hygiene (A. 12, Stip. III, 34; A. 100, 101, 123, 160; T. 229, 107-108, 454). Respondent obviously ignored the warning of deficiencies, because she didn't consider the same to have any merit whatsoever (T. 265-267). After a complete review by the Council on Evaluation of the academic performance of Respondent, the Respondent was notified both orally and in writing on July 5, 1972, that she was being placed on probation and that her academic performance was deficient in keeping to established schedules, meeting all clinical responsibilities on time and gracefully, attending carefully to personal appearance including handwashing and grooming, participating appropriately in activities of the school and directing criticisms and suggestions maturely to her

Docent and to the faculty member in charge of the curriculum block as she might have such criticisms and suggestions (A. 15, 16, Stip. III, 45; A. 117, 124, 146, T. 235, 208, 209, 386, 387, A. 180, Def. Ex. No. 8). Respondent undoubtedly understood what the deficiencies in her performance were, because the Dean in conference with her not only explained each item once, but explained them twice (A. 146-147, T. 386-387, 268-271). The Dean then had another meeting with Respondent in October, 1972, to again review her probationary status and need for improvement and sought ways to offer her additional assistance (A. 117, 146-148, 208, 209, T. 387-389). The Council on Evaluation of the School of Medicine in December, 1972 after reviewing Respondent's academic performance voted unanimously to recommend as follows:

> "The Council on Evaluation recommends that this student be continued on probation and not be considered as a candidate for the M.D. degree in June, 1973. The student may choose to remain at UMKC School of Medicine until June 1, 1973 but may not continue beyond that date unless there is radical improvement in the following areas: clinical competence, peer and patient relations, personal hygiene, and ability to accept criticism." (A. 17, Stip. III 54).

This recommendation was approved by the Coordinating Committee of the School of Medicine and again Respondent's deficiencies were discussed with her by her Docent, the Chairman of the Council on Evaluation and the Dean of the School of Medicine and she was again informed in writing of the specific deficiencies (A. 18, Stip. III, 57, 58; A. 182, Def. Ex. No. 9, A. 117, 124, 130, 147, T. 208, 209, 237, 238, 299, 389-392). At this time, when Respondent was advised of the deficiencies in academic performance, she was also advised that the School would establish an appeals procedure whereby she could elect to appeal the decision of non-graduation.

Respondent elected to appeal the decision that she would not graduate (A. 19, Stip. III, 59) and the School established a panel of seven experienced physicians to conduct an oral and practical examination of Respondent's abilities, the physicians being individuals who had not been actively engaged in Respondent's medical education (A. 208, Def. Ex. No. 22; A. 19, Stip. III, 60-63). The appeal mechanism established by the Dean was fair to Respondent and was certainly an opportunity for Respondent to demonstrate her abilities for the impartial judgment and opinion of individuals outside the Medical School. What better hearing on qualification is there than the opportunity for a student to display his or her medical skills and competency than carrying out clinically oriented performances with patients before impartial, qualified, practicing physicians? The mechanism of seven one-half day performance evaluations is quite similar to that used in the medical profession for American Board Certification (A. 114, 115, T. 204). The result of the written evaluations of the seven physicians showed that only one of the seven physicians felt Respondent was qualified to graduate in June of 1973 (A. 190-207, Def. Ex. Nos. 15 through 21). Even this doctor, a pathologist, readily admitted, however, that he did not have the opportunity to observe Respondent in a clinical setting with a patient so as to be able to render an opinion on clinical competency (T. 52, 53). One of the remaining six physicians recommended graduation even though he deemed Respondent not qualified for internship (A. 190, Def. Ex. No. 15). The remaining five physicians concluded that Respondent was not qualified to graduate with the M.D. degree in June, 1973. (A. 192-207, Def. Ex. Nos. 16, 17, 19, 20, 21; A. 38-40, Memo. and Order, Judge Jurgens, p. 15, 16, 17).

Following receipt of the advisory evaluations from the seven physicians the Council on Evaluation and the Coordinating Committee of the School of Medicine again reviewed and sustained their actions that Respondent not graduate in June of

1973 and Respondent was no notified. (A. 21, Stip. III, 66, 71, 72, 74; A. 187, Def. Ex. No. 12; A. 164, 165, T. 460-461).

Respondent was obviously not qualified to be graduated with the M.D. degree. The Council on Evaluation stated she was not qualified to graduate; the Coordinating Committee said she was not qualified to graduate; the Dean said she was not qualified to graduate; the Assistant Dean and Chairman of the Council on Evaluation said she was not qualified to graduate; six out of the seven independent examining doctors on the appeal panel said she was not qualified to graduate; Respondent's own supervising professor, her Docent, said she was not a safe physician and not qualified to graduate; a female member of the Coordinating Committee that Respondent called as a witness (Dr. Marjorie Sirridge) said Respondent was not a safe physician and not qualified to graduate (A. 91, 92, T. 90); and finally Respondent herself admitted that she lacked some of the required clinical skills (T. 329) and thus had not met the qualifications for graduation. Respondent's expert witnesses could not render an opinion on her qualifications because they had never examined Respondent and knew nothing of her clinical competency (T. 358).

The Council on Evaluation of the School of Medicine, in May, 1973, pursuant to its action in December, 1972 and the notice that Respondent received at that time, again reviewed the academic performance of Respondent for the period of time from December, 1972 through May, 1973 to determine if Respondent had made improvements in the areas of deficiencies which was a reasonable condition for her continuing in School. After review of Respondent's academic performance for the period of December, 1972 through May, 1973 the Council on Evaluation unanimously recommended that Respondent be dropped from the School of Medicine, which recommendation was reviewed and approved by the Coordinating Committee. (A. 21, 22, Stip. III, 73, 77; A. 155, 162, 166, T. 401, 458, 463). The Dean of the School of Medicine accepted the recommenda-

tion of the two review bodies and dropped Respondent as a student by written communication of July 6, 1973. The Respondent appealed the decision to the Provost for Health Sciences of the University of Missouri-Kansas City, who after a complete review of Respondent's record, affirmed the decision of dismissal (A. 154, 155, T. 400-401).

At numerous times throughout her attendance at Medical School, Respondent consulted with her Docent in respect to her performance in the Medical School, the reasons for her being placed on probation and the reason that the School deemed her performance to be academically deficient (A. 90, 100, 101, 108, 109, 110, 147; T. 87, 108, 148, 150, 157, 389). On numerous occasions Respondent appeared before and discussed with the Dean of the School of Medicine and the Assistant Dean the nature of her deficiencies and the improvements which would be necessary (A. 22, 23, Stip. III 80; A. 130, 132, 133, 146-148, T. 268, 299, 322, 386-389; A. 34 Memo. and Order, Judge Jurgens, p. 10 and 11). Respondent was helped and assisted throughout the period of time in an attempt to correct the areas of deficiencies in her overall academic performance (A. 90, 108, 109, 110, 147; T. 87, 148, 150, 152, 155, 389).

It is submitted that the foregoing conclusively establishes that the Respondent was treated fairly by the Medical School. It is not and cannot be refuted that Respondent was advised and counseled about her performance deficiencies for over a period of one year before the separate decisions of nongraduation and dismissal were made by the School.

Prior to the decision by the Eighth Circuit Court of Appeals in the case at bar, the most far reaching decision in the federal courts on the issue of procedural due process being required prior to the dismissal of a student for deficiency in academic performance was the case of *Gaspar v. Bruton, supra*, where the court held at page 851:

> "We hold that school authorities, in order to satisfy Due Process prior to termination or suspension of a student for

> deficiencies in meeting minimum academic performance need only advise that student with respect to such deficiencies in any form. All that is required is that the student be made aware prior to termination of his failure or impending failure to meet those standards."

Clearly under the law, the Medical School complied with these Due Process requirements.

It cannot be questioned that Respondent was advised of her deficient Medical School performance as early as March, 1972 and as previously pointed out in this brief was advised and counseled on her deficient performance on enumerable occasions. The trial court found that Respondent's Docent (supervising faculty member) went to great lengths and extremes in his efforts to assist the Respondent in every phase of her education, repeatedly calling to her attention deficiencies noted by the school authorities. Obviously, such continued deficient performance could lead only to the regretable conclusion of non-graduation and dismissal. Respondent knew that such performance could lead to dismissal (A. 127, 130, T. 244, 299) because the Dean in his letter to Respondent of February 7, 1973, when he advised her of the fact that she would not graduate in May stated "This means that these very substantial and marked improvements must take place and be satisfactory to the Council on Evaluation or you will not be able to continue in the Medical School after May of this year." (A. 182, Def. Ex. No. 9).

In addition to the numerous notices of deficient academic performance, Respondent received several hearings throughout her time at the Medical School, though informal they may have been. As previously pointed out she met on numerous occasions with Medical School officials and faculty to discuss the deficiencies in academic performance. It has been previously held by the Eighth Circuit Court of Appeals that such "informal give-and-take" meetings satisfy requirements of procedural due process, *Greenhill v. Bailey, supra* at page 9, citing as authority

Goss v. Lopez, supra, where school officials are making an academic review rather than serving as a fact-finding body in disciplinary expulsions.

As stated in *Dixon v. Alabama State Board of Education,* 294 F.2d 150, 158 (5th Cir. 1961), *cert. denied,* 368 U.S. 930, 82 S. Ct. 368, 7 L.Ed.2d 193 (1961):

> "By its nature, a charge of misconduct, as opposed to a failure to meet the scholastic standards of the college, depends upon a collection of the facts concerning the charged misconduct, easily colored by the point of view of the witnesses."

It is again pointed out that Petitioners did not make public nor reveal to any source outside its own Medical School officials the dismissal of Respondent or the reasons therefore as is evidenced by Petitioners refusal to discuss or provide any information as to dismissal or reasons therefore to the organization known as American Women in Science. (T. 66, 353-354).

The Chief Judge of the Eighth Circuit Court of Appeals, joined by two other judges, in his written dissent to the Order denying a rehearing stated:

> "Even if due process rights were involved in this case, I believe Horowitz received all the process that was called for under the circumstances. She was informed several times of her inadequacies in the clinical program. She was counseled by the Dean and faculty members. She submitted to a series of oral and practical examinations before a panel of seven doctors and only two doctors were of the opinion that she was qualified to graduate on schedule. Her deficiencies remained uncorrected and she was dismissed from school. Horowitz clearly was given sufficient notice of her weaknesses and she was informed that dismissal might result if corrective measures were not successfully pursued. This notice and the opportunity over the course of a year to correct her deficiencies were sufficient for due process purposes." (A.-58)

The School of Medicine had the absolute discretion and authority to determine whether or not the Respondent should be continued in Medical School beyond her normally expected date of graduation. *Keys v. Sawyer, supra; Greenhill v. Bailey, supra; Connelly v. University of Vermont, supra.* The decision of the School of Medicine to drop the Respondent as a student was not arbitrary and capricious and was not made in bad faith. The School had ample basis upon which to reach such a decision since Respondent had been warned of academic performance deficiencies, particularly in the area of clinical competence, for a period beginning in March of 1972 and continuing through May of 1973 at which time she was dropped from School. The question of how long a school retains a medical student is one which the courts leave to professional medical educators. The trial court correctly found that the dismissal of Respondent was because of the quality of her work and for no other reason.

Respondent not only was afforded due process by Petitioners, but Respondent further had the benefit of a full trial in the Federal District Court for the Western District of Missouri wherein all issues of procedural due process and substantive due process, including numerous allegations of sex, religious and ethnic discrimination and unfair academic performance evaluations were totally explored. Respondent had the opportunity at trial and challenged the academic performance evaluations and decisions of the School of Medicine, but the trial court found that petitioners acted properly in evaluating Respondent's academic performance and in denying graduation and in dismissing Respondent from Medical School, since the evidence overwhelmingly showed Respondent was not capable of performing as a medical doctor (A. 46, Memo. and Order, Judge Jurgens, page 24). Surely a trial in a Federal Court satisfies requirements of due process in the case at bar.

CONCLUSION

A student, in attendance at a public institution of higher education school of medicine whose academic performance is deemed unsatisfactory, is not constitutionally entitled to a notice of charges and a hearing prior to dismissal for deficient academic performance.

The facts of the case at bar clearly establish that even though not constitutionally required, the Petitioners did in fact and law extend to the student procedural due process by giving numerous notices of deficiencies and through the numerous conferences and meetings with the student by medical school officials and faculty about the deficiencies.

It is respectfully requested that the judgment and opinion of the Eighth Circuit Court of Appeals in the case at bar be reversed and that the judgment and opinion of the Federal District Court for the Western District of Missouri be ordered affirmed in its entirety.

Respectfully submitted,

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